BANK OF AMERICA v. CALHOUN

21CF13478

PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED

This is a collections case. Before the Court is plaintiff's unopposed motion to deem matters admitted.

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar shall include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on plaintiff's failure to include the required language, the motion is DENIED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.

WELLS FARGO BANK v. SCHULTZ

21CF13622

PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED

This is a collections case. Before the Court is plaintiff's unopposed motion to deem matters admitted.

On 02/04/22, plaintiff caused to be served upon defendant by regular US mail a first set of Requests for Admission, using his current address of record. Defendant had 35 days from the mailing to provide a verified written response. (CCP §§ 1013 and 2033.250.) Defendant did not timely (or ever) comply. (See Gavrilescu Decl. Para 3.)

Pursuant to CCP §2033.280(b), the party propounding RFAs may "move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction." The trial court "shall" grant the motion unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response in substantial compliance with Section 2033.220. (See *Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 971; *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 777-778.)

The matters contained in the RFA are hereby deemed admitted, subject to counsel's confirmation that defendant did not serve substantially complaint responses before the hearing. In addition to the order deeming admitted all relevant matters within the RFAs, the moving party is entitled as a matter of law to monetary sanctions. (CCP §2033.280(c).) Counsel has not requested any sanction, but is entitled to an order that defendant reimburse plaintiff the filing fee of $60; It is so ordered.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

LEMKE v. MERS INC. et al

21CV45420

DEFENSE MOTION TO EXPUNGE LIS PENDENS; PLAINTIFF MOTION FOR NEW TRIAL

This is one of three wrongful foreclosure cases filed by plaintiff in an attempt to regain ownership of a home he lost in foreclosure more than a decade ago. Plaintiff concedes (1) borrowing almost a half-million dollars, (2) not paying it back, (3) receiving Notices of Default and Trustee's Sale, (4) not curing the arrears, (5) not redeeming the property, (6) filing lawsuits in state and federal court to set aside the foreclosure sale, and (7) resisting eviction efforts. Plaintiff does not dispute that his deed of trust allowed for undisclosed assignments, that the foreclosure sale was free from procedural defects, and that the current owners qualify for BFP status. Nevertheless, plaintiff contends that the law of wrongful foreclosure has changed over the past decade in his favor, entitling him to try it all over again.

Defense Motion to Expunge Lis Pendens - Granted

Henry and Julie Martinez are the current owners of the home plaintiff lost in foreclosure. On 03/10/22, they caused to be filed and served a demurrer to all causes of action asserted against them in the operative pleading, to wit: the Third (wrongful foreclosure), Fourth (cancellation of instruments), Fifth (slander of title) and Seventh (quiet title) causes of action in plaintiff's First Amended Complaint.

On 05/12/22, while the demurrer was pending, plaintiff recorded in the chain of title for the subject property a Notice of Lis Pendens.

On 05/20/22, this Court issued an order sustaining, without leave to amend, the demurrer on all counts. A signed order, the functional equivalent of a judgment, was entered eleven days later.

On 06/13/22, Henry and Julie filed and served a motion to expunge the lis pendens. Plaintiff opposes the motion, contending that he was required to record the Notice, and that his motion for a new trial requires that the Notice remain of record. Neither contention is accurate.

A *lis pendens* is a recorded document giving constructive notice to the world that an action is pending in the courts which may have an impact on the litigants' right or title to the property. (See *Park 1000 Investment Group II v. Ryan* (2010) 180 Cal.App.4th 795, 807; *Formula Inc. v. Superior Court* (2008) 168 Cal.App.4th 1455, 1462; *Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1375-1376.) Anyone with an interest in real property may move a court for an order expunging a recorded lis pendens if (1) the court case upon which the lis pendens is based does not contain a real property claim, or (2) the party responsible for filing the lis pendens is unable to show by a preponderance of the evidence that he or she is more likely than not to prevail on the claim affecting right or title to the property. (CCP §§ 405.30-405.32; *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1007; *Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529.) There is no dispute that this wrongful foreclosure case contained a real property claim, and that plaintiff was entitled (but never required) to record a

lis pendens. (See *Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, 1148.) However, to sustain that recording, plaintiff must demonstrate probable validity of the real property claim. That he has not done.

As set forth in great detail in this Court's order of 05/20/22, while plaintiff failed to state a viable claim on the facts pled, amendment was futile since any claim plaintiff might assert vis-à-vis the subject property would be barred by the doctrine of preclusion and/or the statute of limitations. While it is true the legal theory upon which plaintiff relied gained validity in the intervening years, when the claims accrued and for an ensuing number of years, those claims had no merit. As it presently stands, a change in law does not revive cases dismissed a decade earlier absent express Legislative authority. Moreover, plaintiff's reliance on that change of law (*Yvanova v. New Century Mortgage Corp*. (2016) 62 Cal.4th 919), is misplaced for two reasons: (1) that decision only covers *void* assignments, and since plaintiff's deed of trust allowed unfettered assignments, a private agreement between LoanCity and MERS imposing limits thereon renders the eventual assignment *voidable*, not void; (2) that decision does nothing to upend the protections afforded BFPs, which means that plaintiff could only pursue a money judgment against the entities, not a claim leading to a change in legal title away from the BPF. (See *Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279; *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23; *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802; *Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252; *Saterback v. JPMorgan Chase Bank, N.A.*, (2016) 245 Cal.App.4th 808.) Plaintiff's real property claims against Henry and Julie Martinez – having now been dismissed again – are now, and have always been, without merit.

Although defendants made brief reference to CCP §408.35, there was no actual request for an award of any legal fees associated with this motion set forth in the motion or in any declaration. Defendants are entitled, at the very least, to recover their filing fee of $60. Plaintiff has not requested an opportunity to post a counterbond, and as such no threshold amount for that is being set.

Plaintiff's Motion for New Trial - Denied

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar shall include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on plaintiff's failure to include the required language, the motion is subject to denial without prejudice to refile; however, given the tight time constraints with motions for new trial, the error will be forgiven in the interests of justice just this once.

A new trial motion is available to challenge judgments disposing of the action without trial where an "issue of fact or law" has been decided – including a demurrer sustained without leave to amend. (See CCP §656; *Carney v. Simmonds* (1957) 49 Cal.2d 84, 88-90.) Plaintiff contends that the Judgment entered in favor of Henry and Julie Martinez on 06/27/22 following a demurrer sustained without leave to amend was based upon an irregularity in the proceedings, insufficiency of the evidence, and/or an error in law. (CCP §657.)

An irregularity in the proceedings refers to conduct other than orders and rulings, such as personal misconduct by the trial judge or any other departure from the due and orderly method of disposition of an action, by which the substantial rights of a party have been

materially affected. (*Montoya v. Barragan* (2013) 220 Cal.App.4th 1215, 1226-1230.) Plaintiff does not describe anything which might qualify as an irregularity in the proceedings.

An insufficiency of the evidence may exist when the trial court, acting as the 13th juror, undertakes an independent review of the evidence presented to the jury and concludes that the verdict is simply not supportable from the evidence. (See *Licudine v. Cedars-Sinai Med. Center* (2016) 3 Cal.App.5th 881, 900-901; *David v. Hernandez* (2014) 226 Cal.App.4th 578, 588.) Plaintiff has not identified any evidence which he believes this Court gave too little, or too much, weight.

An error in law can only support a new trial order if (1) there was indeed an error of law made by the court, and (2) the error affected a substantial right, preventing plaintiff from obtaining a fair hearing. (*Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 147.) Although plaintiff has identified a few aspects of this Court's 05/20/22 order which he believes to be in error, plaintiff makes no effort to connect the dots between those "errors" and anything preventing him from a fair hearing. For example, plaintiff contends that this Court does not understand the MERS agreement, but whether MERS had a "private agreement" which was different in kind from the deed of trust, it is of no consequence to the issues of preclusion or limitations (nor does it render the assignment void – see discussion *supra*). Plaintiff also contends that it was error for this Court to consider the ruling on the motion to expunge in 13CV39159 since a motion to expunge is not entitled to preclusion, but fails to appreciate that this Court identified numerous instances (not just the motion to quash) in the past when the question of foreclosure was raised and decided adverse to plaintiff. Finally, plaintiff claims that this Court erred in failing to apply "appellate tolling" to the time for bringing the new wrongful foreclosure claim, but plaintiff misunderstands tolling entirely. As noted, there is no right to bring an action, lose, appeal, and refile the same claim outside the statute of limitations based on how long it took the Court of Appeal to reject your claim.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare formal Orders pursuant to Rule of Court 3.1312 in conformity with these rulings.

FOSTER v. IRBC2 PROPERTIES LLC et al

21CV45573

DEFENSE DEMURRER; MOTION TO EXPUNGE LIS PENDENS

This is a wrongful foreclosure case. Before the Court this day are the following motions:

1. Motion to expunge lis pendens filed by defendant IRBC2 Properties;
2. Demurrer to the 1st (cancellation), 2nd (slander of tile) and 7th (declaratory relief) causes of action, filed by defendant Orion Financial and Connie Riggsby;
3. Demurrer to the 1st (cancellation), 2nd (slander of tile) and 7th (declaratory relief) causes of action, filed by defendant IRBC2 Properties.

Motion to Expunge – Granted, Without Prejudice

A *lis pendens* is a recorded document giving constructive notice to the world that an action is pending in the courts which may have an impact on the litigants' right or title to the property. (See *Park 1000 Investment Group II v. Ryan* (2010) 180 Cal.App.4th 795, 807; *Formula Inc. v. Superior Court* (2008) 168 Cal.App.4th 1455, 1462; *Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1375-1376.) Pursuant to CCP §§ 405.22 and 405.23, a claimant filing a notice of lis pendens must follow three steps:

1. Prior to recordation, serve by registered or certified mail, return receipt requested, a copy of the notice on all known owners and those with adverse claims to the property;
2. Concurrent with recordation of the notice, record a proof of service consistent with CCP §1013a. if service cannot be effectuated, a declaration of due diligence is needed (§405.22); and
3. Immediately following recordation of the notice and proof of service, file a copy of both with the court in which the action is pending.

Pursuant to CCP §405.23, the notice of lis pendens "shall be void and invalid" as to any adverse party or owner of record unless the above requirements have been met. Plaintiff concedes that his lis pendens (2021-017023) is technically deficient. Expungement is warranted; however, when expungement is based on technical violations, the claimant is free to refile. (*McNight v. Superior Court* (1985) 170 Cal.App.3d 291, 303.) Plaintiff offers to do so. As such, the offense is *de minimus*, and so shall be any award of fees. Counsel advises that his hourly rate is $400 – which is above the "going rate" for this community of $300. This Court finds that on a simple motion such as this, anything in excess of 2 hours is dilatory. **Counsel for defense is entitled to recover $660.00 (2 hours plus filing fee) from plaintiff.**

As for the merits, while this Court could look past the procedural defects in this instance, the demurrers directed at the operative pleading, coupled with plaintiff's confession that some of the claims require amendment, means that a First Amended Complaint is all but guaranteed. Since the lis pendens must be tested against the operative pleading (see *Kirkeby v. Superior*

Court (2004) 33 Cal.4th 642, 647-648; *Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 911), testing it now would only be to offer an advisory opinion. Any issue involving a counterbond is MOOT.

Demurrer to Complaint – Sustained, 30 days leave to amend

A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. The complaint is read as a whole. Material facts properly pleaded are assumed true, but contentions, deductions or conclusions of fact/law are not. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (CCP §§ 425.10(a), 459; in accord, *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 236 n.10.)

Plaintiff's first cause of action is uncertain. Pursuant to Civil Code §3412, "a written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled." To plead a cause of action for cancellation of instrument, plaintiff must show that he will be injured or prejudiced if the instrument is not cancelled, and that such instrument is void. (See *Robertson v. Superior Court* (2001) 90 Cal.App.4th 1319, 1323.) An "instrument" is "a written paper signed by a person or persons transferring the title to, or giving a lien on real property, or giving a right to a debt or duty." (Government Code §27279.) Recordings not affecting title are not instruments. (See 5 Miller & Starr, Cal. Real Estate (3d ed. 2000) §11:6, pp. 19–35; *Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1388, 1399-1400; *Ward v. Superior Court* (1997) 55 Cal.App.4th 60, 64-65.) Plaintiff identifies a number of recordings, but it is not clear to this Court if plaintiff is seeking to rescind all of those recordings, or just some of them. Assuming the former, specific factual averments are required to illuminate a basis for cancelling each recording.

Plaintiff's second cause of action is also uncertain. Slander of title occurs when a person publishes a false statement that disparages title to property and causes pecuniary loss. To state a claim for slander of title, a plaintiff must allege (1) a publication, (2) which is without privilege or justification, (3) which is false when made, and (4) which causes direct and immediate pecuniary loss. In general, instruments recorded in connection with a nonjudicial foreclosure proceeding are privileged communications under Civil Code §2924(d) and Civil Code §47, except in those rare instances when the publication either was (1) motivated by hatred or ill will towards the plaintiff, or (2) that the defendant lacked reasonable grounds for belief in the truth of the publication and acted in reckless disregard of the plaintiff's rights. (*Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1336-1338; *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 335-336.) Plaintiff references different documents, and claims that some of them were unauthorized, but fails to address the privileged nature of most of those.

Plaintiff's seventh cause of action is adequately pled, but the precise declaration sought is unclear. The essential elements of a declaratory relief cause of action are (1) an actual controversy between the parties regarding contractual or property rights (2) involving

continuing acts/omissions or future consequences, (3) which has sufficiently ripened to permit judicial intervention and resolution, but (4) which has not yet blossomed into an actual cause of action. (See *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 807-808.) Of course, as with other equitable actions, the trial court has discretion not to act where the court feels it is neither necessary nor proper to do so. (CCP §1061.) For example, if there exists a straightforward civil remedy for the alleged wrong, or no legal basis for relief at all, declaratory relief is generally not warranted. (See *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433; *Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 614.) Plaintiff seems to be requesting a declaration that the subject property is "vested in plaintiff alone" – but does that mean he owns the house and no encumbrance exists at all? Clearly that cannot be what plaintiff is seeking.

Although this Court is granting plaintiff leave to amend, it is important for plaintiff to understand that *Yvanova v. New Century Mortgage Corp*. (2016) 62 Cal.4th 919, did not create a blanket right to challenge assignments. Quite the contrary, plaintiff can only sue for wrongful foreclosure if the challenged assignments are void, and the facts plead here do not show void assignments. (See *Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279; *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23; *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802; *Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252; *Saterback v. JPMorgan Chase Bank, N.A*., (2016) 245 Cal.App.4th 808.)

On the assumption that a First Amended Complaint will be on file within 30 days, the demurrer filed by FCI Lender Services, set for hearing on 09/02/22, may be moot.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare formal Orders pursuant to Rule of Court 3.1312 in conformity with these rulings.

HUA DENG v. HASTON

21CV45684

DEFENDANT'S MOTION TO SET ASIDE DEFAULT/JUDGMENT

This is a civil action for trespass. Before the Court this day is a motion by defendant to set aside this Court's 02/24/22 default judgment.

Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar shall include" specified language in the Notice of Motion, and "failure to include this language in the notice may be a basis for the Court to deny the motion." Based on plaintiff's failure to include the required language, the motion is DENIED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required. (In the interim, the parties are strongly encouraged to meet and confer in the hopes of finding some resolution to this issue given (1) the absence of a declaration of due diligence validating sub-service, and (2) the strong preference for cases to be tried on their merits. [See *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134; *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750; *Giorgio v. Synergy Mgmt. Group, LLC* (2014) 231 Cal.App.4th 241, 248-249; *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 185.])

HADERER v. GROSS et al

22CV46027

DEFENDANTS GROSS' DEMURRER AND MOTION TO EXPUNGE

This is a quiet title action based upon plaintiffs' ostensibly adverse possession of certain commercial property (which includes The Hotel Leger) within this County. Before the Court is a demurrer by defendants Barry Gross and Gross Mortgage Corporation to the operative pleading, as well as a defensive motion by Gross Mortgage Corporation to expunge lis pendens 2022-006783.

There is no opposition to either motion. Since the inception of this action, plaintiffs have been represented by Attorney Michael Abbott. Defense counsel mail-served the motion to expunge to Attorney Abbott's office on 06/21/22. Defense counsel personally dropped off (through a mail slot) the demurrer to Attorney Abbott's office on 06/29/22. On 07/15/22, defense counsel sent to Attorney Michael Abbott, via overnight mail, a notice of having not received any opposition to the pending motions.

The silence alone suggests tacit confirmation of defense arguments, but reference to the various emails attached to the defense papers and declarations bolsters this impression. Plaintiffs' counsel appears to be actually aware of the demurrer and motion to expunge, and plaintiffs appear aware that they have a questionable legal basis for concluding any ownership interest in the hotel based on defendant's willingness to let them live there and run the hotel until a permanent owner came along (which has since occurred) in exchange for paying the property taxes.

Demurrer – Sustained with 30 days leave to amend

The demurrer is sustained. Plaintiffs have not alleged any facts in Paragraph 12 permitting a finding that their use of the subject property was adverse, meaning that it was without the explicit or implicit permission of the landowner. (See *Husain v. California Pacific Bank* (2021) 61 Cal.App.5th 717, 725-726; *McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1181; *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 327; *Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1249; *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 450.) Plaintiffs' averment regarding the payment of property taxes, while a necessary element of the claim, does not supplant the obligation to plead facts showing that such payment was without the true owner's actual consent – which appears to be the case here.

Although leave to amend is usually conditioned upon a request from the pleading party, and a showing of how the amendment might cure the defect, this Court is mindful of the fact that Attorney Abbott may be guilty of positive misconduct (abandonment), which would permit plaintiffs a chance to undo any judgment arising from silence in the face of a dispositive motion. (See, *e.g., Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 900; *Seacall Development, Ltd. v. Santa Monica Rent Control Bd.* (1999) 73 Cal.App.4th 201, 207.) As such, plaintiffs shall be permitted 30 days leave to amend.

Motion to Expunge – Granted, Without Prejudice

A *lis pendens* is a recorded document giving constructive notice to the world that an action is pending in the courts which may have an impact on the litigants' right or title to the property. (See *Park 1000 Investment Group II v. Ryan* (2010) 180 Cal.App.4th 795, 807; *Formula Inc. v. Superior Court* (2008) 168 Cal.App.4th 1455, 1462; *Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1375-1376.) Pursuant to CCP §§ 405.22 and 405.23, a claimant filing a notice of lis pendens must follow three steps:

1. Prior to recordation, serve by registered or certified mail, return receipt requested, a copy of the notice on all known owners and those with adverse claims to the property;
2. Concurrent with recordation of the notice, record a proof of service consistent with CCP §1013a. if service cannot be effectuated, a declaration of due diligence is needed (§405.22); and
3. Immediately following recordation of the notice and proof of service, file a copy of both with the court in which the action is pending.

Pursuant to CCP §405.23, the notice of lis pendens "shall be void and invalid" as to any adverse party or owner of record unless the above requirements have been met. Plaintiffs' lis pendens is procedurally defective as it failed to comply with any of the above requirements. Expungement is warranted; however, when expungement is based on technical violations, the claimant is free to refile. (*McNight v. Superior Court* (1985) 170 Cal.App.3d 291, 303.)

As for the merits, anyone with an interest in real property may move a court for an order expunging a recorded lis pendens if (1) the court case upon which the lis pendens is based does not contain a real property claim, or (2) the party responsible for filing the lis pendens is unable to show by a preponderance of the evidence that he or she is more likely than not to prevail on the claim affecting right or title to the property. (CCP §§ 405.30-405.32; *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1007; *Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529.) There is no dispute that this quiet title case contains a real property claim, and that plaintiffs are entitled to record a lis pendens. (See *Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, 1148.) However, to sustain that recording, plaintiffs must demonstrate probable validity of the real property claim. Taking the verified complaint and comparing that to the evidence presented by defendants herein, this Court concludes that plaintiffs have not established probable validity of their quiet title claim because their claim to title is based solely on adverse possession, and the evidence provided by defendants make plain that plaintiffs did not occupy and operate the hotel "adverse" to defendants (see demurrer discussion, *supra*).

Plaintiffs have not requested an opportunity to post a counterbond, and as such no threshold amount for that is being set.

Defendants are entitled to an award of legal fees related to the motion to expunge. Based on the going hourly rate in this venue of $300, and the vast amount of evidence presented in support of the motion, this Court finds that 7 hours is sufficient. Thus, plaintiffs shall reimburse defendant Gross Mortgage Corporation $2,160 (allowed hourly plus filing fee).

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare formal Orders pursuant to Rule of Court 3.1312 in conformity with these rulings.